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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,080	09/28/2001	D. Scott Lineback	876P142	7616
26568	7590	03/02/2004	EXAMINER	
COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/967,080

Applicant(s)

LINEBACK ET AL.

Examiner

Helen F. Pratt

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*db*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

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### DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black, Jr. et al. (5,403,604) in view of Lawhon et al. (4,643,902) and Dechow et al. (4,522,836) and Puri (4,439,458).

The claims are rejected for the reasons of record cited in the last office action.

Claims 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to claims 1-35 above, and further in view of Norman et al. (4,666,721).

The claims are rejected for the reasons of record cited in the last office action.

### ARGUMENTS

Applicant's arguments filed 1-21-04 have been fully considered but they are not persuasive. Applicants argue as to Lawhon et al. that it discloses temperatures higher than those claimed of 40 C. (page 4, 2<sup>nd</sup> para.). However, the reference was used to show that it is known that high temperatures will volatilize aroma and flavor components in juices. Certainly, the use of 45 F. is a relatively cool temperature which would reduce such vitalization of aroma and flavors. The reference to Lawhon also uses processes at 23 C. when using a UF membrane (col. 9, lines 28-39). Since it is recognized that lower temperatures inhibit the loss of aroma and flavor characteristics, it would have

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been obvious to reduce the temperature to whatever degree, to retain these flavor and aroma characteristics.

Applicants argue as to Lawhon et al. that there is no suggestion of adding normal acid retentate immediately after deacidification to the reduced-acid RO retentate to discourage microbial activity. However, the reference shows combining the reduced acid portion with non reduced-acid RO retentate or permeate (col. 6, lines 30-33). No delay in combining is disclosed and nothing is seen in the claims or specification to define the term "immediately". Even if the reference does not say "immediately" no other suggestion is seen as to holding the juice. Indeed, applicants' specification does not give any more direction as to immediacy than the reference (page 24 para. 0062). Certainly, combining of the more acid juice would serve the function of discouraging microbial activity as most microbes do not grow in an acid environment.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 2-23-04

  
HELEN PRATT  
PRIMARY EXAMINER